

Towards an ambitious Digital Trade Policy

DIGITALEUROPE Contribution to the EU Trade Strategy

On May 6, the European Commission (EC) released a communication for a Digital Single Market Strategy (DSM) for Europe (COM (2015) 192 final), including a strong international dimension. As stated in the DSM communication, the Internet and digital technologies are transforming our world. Information and Communications Technology (ICT) has become more than a specific sector, it is now a key driver for innovation, growth and job creation in almost all sectors of the economy, and an enabler for societal wellbeing and individual empowerment.

A « Go digital » strategy de facto supports the « Go global » approach. An ambitious digital trade1 and investment policy will allow the European Union to be a front runner on the international scene. According to a recent survey led by Accenture2, 96% of business leaders say digital technologies are important or critical to boost EU competitiveness, 93% for economic growth and 75% for EU job creation. An OECD study on "The Internet Economy on the Rise" reported that with nearly 1 billion broadband subscriptions in the OECD area, the Internet has now transformed from a useful platform to be an essential and multidimensional infrastructure that needs to be kept open and decentralized in order to enable communication, collaboration, innovation, inclusive participation and economic growth3. In addition, trade in digital products and services is growing, and digital technologies are becoming enablers for trade of other goods and services. Finally, global markets provide tremendous business opportunities for the European ICT industry with global sales estimated at over 2.5 trillion Euro4.

EU exports of digitally deliverable services to the world increased from EUR 415 billion to EUR 667 billion in 2012, representing 24,8% of total EU exports. Therefore, restrictions to digital trade hamper economic growths, employment and new business models in the global digital economy. Existing barriers in the European Union (EU) and outside our borders mean citizens miss out on goods and services, internet companies and start-ups have their horizons limited, and businesses and governments cannot fully benefit from digital tools6.

We very much hope the future EU Trade Strategy for Growth and Jobs will build on the recommendations of the DSM Communication⁷ highlighted in the "international dimension" section and set up principles to promote and foster digital trade as a horizontal matter to the benefit of the whole EU industry and society.

¹ As there's no existing standard or generally accepted definition for "digital trade", we define it as EU intra commerce and international trade in which the Internet and Internet based technologies play a significant role in ordering, producing, or delivering products and services.

² Accenture report "Accelerating Europe's comeback: digital opportunities for competitiveness and growth", 2014, released in the framework of the 12th European Business Summit.

³ OECD (2013), The Internet Economy on the Rise. Progress since the Seoul Declaration, OECD Publishing, http://www.keepeek.com/Digital-Asset-Management/oecd/science-and-technology/the-internet-economy-on-the-rise_9789264201545-en#page31

⁴ Statistics from the European IT Observatory, EITO, 2012

⁵ The European Center for International Political Economy projects that data localisation restrictions alone can reduce GDP in EU by 1,1%; The Costs of Data Localisation: Friendly Fire on Economic Recover, 2014

⁶ COM(2015)192 final, a Digital Single Market Strategy for Europe, May 2015, p.3.

⁷ See DIGITALEUROPE Comments on the Digital Single Market Strategy, http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core Download&EntryId=955&PortalId=0&TabId=353



Part I. DIGITALEUROPE priorities

Focus on Multilateral/Plurilateral negotiations (tariffs and non-tariffs)

In 2015, the **World Trade Organisation** (WTO) celebrates its 20th anniversary. « Trade works » will be the main theme of the next WTO Public Forum in October 2015. Digital Trade should definitely be a key component of the new WTO agenda as an enabler of trade. The WTO and the international trading system should not miss the boat of the Internet, recognised as the most important innovation for globalisation since the maritime shipping laness. The EU should take the leadership and address an ambitious message for the post-Doha work at the 10th Ministerial Conference of the WTO to be held in Nairobi in December 2015.

In addition to the governance and decision-making rules of the WTO, sequencing has also turned out to be one of the main barriers to progress under the Doha Development Agenda (DDA). Going forward there should be no sequencing when discussing services; agriculture, non-agriculture and services should all be treated equally.

Because of the several years of WTO stalemate, we welcome the pragmatic approach of the EU to focus more of its resources on plurilateral agreements such as TiSA and ITA. Obviously, the ultimate aim would remain extending such agreements to all WTO members.

DIGITALEUROPE strongly supports an ambitious **Trade in Services Agreement (TiSA)** and calls for its completion as soon as possible as it can serve as an important enabler to a wider WTO agreement. DIGITALEUROPE seeks full market access and national treatment commitments in computer and related services and telecommunication services, which provide the infrastructure that supports the global digital economy. We also recommend removing any other barriers to trade and suggest seizing this opportunity for new digital trade rules and disciplines, to remove localization requirements and to enable cross-border data flows in support of service delivery (see also pp. 6, 7 & 8) and in respect of Article 14 of the GATS. The TiSA could be an instrument to address new protectionist measures that are being considered and developed all around the world. The European Commission should also encourage more WTO members to join the talks as long as they accept the same level of ambition.

We also encourage the relaunch of the WTO eCommerce Work Programme as a forum to address Digital issues at the multilateral level.

The Information Technology Agreement (ITA) is one of the most important tools to continue leveraging on ICT as an enabling technology. Few international trade agreements have had the same sweeping impact on global trade and since entering into force 1997 the agreement has promoted innovation, productivity, economic growth and prosperity. The EU and its trading partners are now negotiating the expansion of this agreement to offer state-of-the art technologies at the most affordable price by removing duties on hundreds of IT products. It is undisputed the ITA has significantly contributed to the dramatic technological development we have experienced during the last two decades and we now hope that an expanded ITA will do the same for the next decades to come.

⁸ ECIPE Working Paper N°04/2011, "Future-Proofing World Trade in Technology: Turning the WTO IT Agreement (ITA) into the International Digital Economy Agreement", Hosuk Lee-Makiyama, pp.24



We have seen the negotiations for an expanded agreement reach their final stages and we now urge the negotiating countries to bridge their remaining differences. A swift conclusion of the agreement that will also provide for short term duty free treatment of the agreed amended products would represent a historic triumph for global trade and also help restore confidence in the World Trade Organization's ability to deliver tangible negotiating results.

In order to keep pace with technological change, DIGITALEUROPE also recommends the inclusion of a « review clause » in the final ITA to make sure the agreement will continue to apply to next « state of the art » products. Further, we encourage the EU to convince more Governments to become signatories of the Agreement.

The WTO took an important step at the plurilateral level this Spring 2015 with the WTO Workshop addressing IT Non-Tariff barriers (NTBs) which could lead soon to a new WTO work programme to tackle the trade-distorting effects from NTBs. We ask the WTO to keep the momentum and encourage the EU and other WTO members to work on a comprehensive work programme with ambitious but realistic objectives and timeline.

Finally, we also encourage EU Member States and other WTO members to continue the negotiations for the conclusion of the **Environmental Goods Agreement** and the expansion of the **Government Procurement Agreement** and to start the domestic implementation process of the **Agreement on Trade Facilitation (TFA)** which contains provisions for faster and more efficient customs procedures through effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues.

Progress in bilateral discussions

DIGITALEUROPE supports the ongoing bilateral negotiations with the United States (TTIP), Japan (EU-Japan FTA), Vietnam (EU-Vietnam FTA) and China (EU-China BIT).

A key priority for the ICT industry is for the TTIP and the EU-Japan FTA to include commitments that promote the growth of ICT goods and services, telecoms, cloud computing, and e-commerce, and ensuring that the digital ecosystem and the data that flows through it remains open to innovation and commerce globally. These trade agreements should also strive to sustain and enhance cooperation on the protection of intellectual property rights and create a climate in which innovators are encouraged to invest in the research, development, and commercialisation of leading-edge technologies, and promote the dissemination of technologies and services. Another priority for our industry is for the TTIP and EU-Japan FTA to include provisions that reduce excessive regulatory costs, unjustified regulatory differences, and duplicative or unnecessary red tape for ICT products and services. Furthermore we believe that having an ICT chapter in TTIP is a tremendous opportunity to set the gold standard for inclusion of ICT chapters in other new trade agreements and fortify the global rules-based trading system.

DIGITALEUROPE also very much supports the ongoing negotiations for an EU-China Bilateral Investment Treaty (BIT) to facilitate access of European companies to the Chinese market and promote investment in technology development, innovation and deployment, which together would greatly benefit the ICT industry in both Europe and China. The BIT should be a mechanism that both countries could use for creating a better business environment. In this regard, we encourage the EU to include an Investor-to-State Dispute Settlement (ISDS) clause in the agreement.



We also encourage the Commission to reactivate the negotiations for a **EU-India FTA** and a **EU-Mercosur FTA**, as these two markets are of high importance for the ICT industry in Europe.

We are also looking forward to the conclusion of the **EU-Vietnam FTA** as long as it includes provisions that would prevent Vietnam from imposing new forced localisation requirements and barriers, new types of local content and local performance requirements in any service sectors, including in the public procurement market. It is crucial to create a level playing field for all investors in Vietnam. Without such provisions DIGITALEUROPE would not be able to support the EU-Vietnam FTA.

Further, with the soon completion of TPP it is important for the EU to reassess its strategy towards the **ASEAN region**, because there is a risk that European companies will be placed at a competitive disadvantage. The EU should obviously also explore launching trade negotiations with other trading partners around the world, but it is important to use a realistic and pragmatic approach before deciding to launch new trade agreements, because the focus should be on concluding negotiations within a realistic timeframe.

Finally, we wish to see the FTAs with **Singapore** and **Canada** approved and implemented by 2016 as they are expected to remove almost all duties and non-tariff measures for respective partners.

Benefiting from a fair and competitive business environment in the EU

DIGITALEUROPE welcomes the Communication (COM(2014)244) setting out concrete policy options for the modernisation of **EU export controls** and their adaptation to rapidly changing technological, economic and political circumstances. Without compromising the overall goals of national security and international security and stability, a well-balanced and proportionate export control system which considers global availability of dual use items, global value chains and the ambition for a global level playing field can actually strengthen the competitiveness of the digital technology industry in Europe. By reducing the differences between Member States, through a greater harmonisation of practices and procedures, a modernised export control policy could also pave the way for a more level playing field within the EU.

Even if the Directorate General for Trade is not in charge of customs related issues - we recommend also to strengthen the coordination and coherence between DG Trade and DG Taxud on the implementation of the new **Union Customs Code**9 (UCC) to ensure European businesses will benefit from existing customs valuation principles for the import of products into Europe in order to continue offering state-of-the-art products and technologies at a competitive price

Some of the changes introduced by the implementing act of the UCC could hurt both large and small and medium-size enterprises (SMEs) relying on import and export of goods for their business and reduce the competitiveness of European companies at a time of economic uncertainty. This is inconsistent with the objectives which the EU is targeting and with the assertive Trade Policy Agenda proposed by the Commission for 2010-2015, aiming for a sustainable economic recovery through increased competitiveness of EU companies and lower prices for EU consumers.

⁹ Regulation (EU) No 952/2013 of the European Parliament and of the Council adopted on 9 October 2013 laying down the Union Customs Code http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1



Supply Chain Dialogue with Third countries

On 5 March 2014 the European Commission and the European External Action Service released a proposal for an integrated approach to responsible sourcing from conflict-affected and high-risk areas. DIGITALEUROPE welcomes the proposal and agrees that breaking the link between conflict financing and the sourcing of minerals requires a comprehensive approach in order to effectively tackle the root causes of conflicts.

The proposal for a regulation concentrates on upstream supply chain operators and on facilitating transmission of quality information through the supply chain. We believe that this approach leverages the appropriate point in the supply chain and is consistent with the OECD Due Diligence Guidance and with industry initiatives, such as the Conflict-Free Sourcing Initiative (CFSI).

We welcome the fact that the EU takes an active role in the raw materials diplomacy and engages with regions where many smelters and refiners are located.

Part II. Digital Trade as a horizontal part of ongoing and future trade agreements

Worldwide cross-border online traffic grew 18-fold between 2005 and 2012, and could increase a further eightfold by 2025. Cross-border e-commerce has grown to represent more than 10 percent of the trade in goods in less than a decade. The European Union has a lot of strengths in the digital industry. European SMEs and startups are tapping into new markets around the world via the Internet. Today, the EU is the biggest global exporter of digital services.

Access to foreign markets must remain open if Europe's entrepreneurs are to flourish and if the EU is going to be able to deliver on its Digital Single Market Strategy. The new EU Trade strategy should be firmly linked up with the DSM to ensure coherence between these two essential initiatives and continued commitment to free trade. The recognition in the DSM of the "international dimension" of digital is an important first step and we encourage the EU to also put this into practice. The ICT sector is global in nature and European Industry will not be able to lead in areas such as Industry 4.0 and digital transformation unless the digital economy remains integrated with the global ecosystem and marketplace (see Digital Transformation of European Industry and Enterprises, a report of the Strategic Policy Forum on Digital Entrepreneurship set up by DG Grow, 201510).

Therefore, the European Commission should prioritise horizontal ICT provisions in new FTAs, paying in particular close attention to the free flow of data, limitations on data storage requirements and conformity/certification requirements as prerequisites for keeping markets open.

The Commission could also set up **new cooperation mechanisms** in plurilateral and bilateral agreements to support the creation of harmonised rules in new types of services, the joint collaboration in R&D, exchange of best practices for more creativity and innovation, and create new ecosystems (eg: smart cities). A single country is not able to accomplish the change towards new megatrends such as Industry 4.0 alone, such cooperation would allow governments to jointly address matters, such as standardisation, strengthening broadband

^{10 &#}x27;Digital Transformation of European Industry and Enterprises' – report from the Strategic Policy Forum on Digital Entrepreneurship, Published on: 25/03/2015, Last update: 05/05/2015, http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8188



infrastructure handling complexity, regulatory convergence, or upskilling workforce, that are essential to explore the full potential of new technologies.

Digital Services, e-Commerce and cross-border data flows

The Internet and ICT services have become a strong enabler for trade, economy, society11: citizens benefit from more accurate health diagnoses and innovative e-learning solutions; cities become less congested, reducing CO2 and other pollutant emissions; charities deliver fast emergency aid; research institutes predict and prevent pandemics; SMEs reduce costs and expand globally and deliver new innovative and personalized products.

DIGITALEUROPE encourages DG Trade to build on the e-commerce principles developed in the DSM strategy and to scale them up at a global level: simplification and harmonisation of rules to incentivise consumers and businesses to engage in cross-border ecommerce.

European companies will only benefit from this development if Europe remains engaged in a global trading system that is free and open. The free movement of data across borders is now essential to all companies involved in international trade. This is why companies from all industry sectors – from energy companies to car manufacturers - see trade agreements as an opportunity to set new digital trade principles, including horizontal provisions safeguarding cross-border flows of data, and resisting calls for the mandatory and unjustifiable localisation of data. Removing restrictions to the free flow of data and removing measures of localisation of data and IT hardware infrastructure are therefore positive, especially in the context of Cloud, Big Data, Smart Cities and the Internet of Things, and thus the overall economic growth.

This doesn't mean that Europe has to sacrifice the high standards for data protection that it espouses. Data protection rules should not be discussed in a trade agreement. Proper exemptions for data protection should therefore be developed, based on existing principles within the GATS provisions (Article 14).

We would like to also emphasise the social value of data in terms of democratisation and freedom of expression.

The ICT industry in Europe is committed to help build citizens' trust and confidence in new technologies. We need the trust of our customers, so do the companies outside the ICT sector that rely on our products and services to reshape their operations.

Market access and Regulatory cooperation

There is arguably no more effective way to deny market access to technologies than through the use of technical regulations that act as specific technology mandates which are not performance based. Locking in technology through regulation impedes innovation and denies consumers the benefits of new, more advanced ICT goods and services. Although clearly counterproductive in the long run, some governments in emerging markets erroneously believe that technical regulations requiring the use of domestic technologies can accelerate their economic development.

¹¹ Brookings, Global Economy & Development Working Paper 79, "The Importance of the Internet and Transatlantic Data flows for U.S. and EU Trade and Investment", Joshua P. Meltzer, October 2004, p.2.



Unique country-specific technical regulations can be burdensome, especially for SMEs, and become quickly outdated as technology evolves. They should only be used in situations where no other options (e.g., global standards/specifications - see below) are available to achieve legitimate objectives, such as ensuring adequate protection of health, safety, or the environment. Even more worrying is the case where a technical regulation needs to mandate a particular technology. These mandates easily promote vested domestic interests seeking protection from competition, and therefore should be avoided.

The WTO Agreement on Technical Barriers to Trade (TBT) disapproves prescriptive technical regulations, but its relevant provision is too general to be effective in reducing the increasing use of technology mandates in emerging markets. There have been attempts to establish "good regulatory practices" (GRP) or principles of regulatory reform but they have not had much traction among governments and thus little positive effect¹².

Following the success of the WTO ITA Workshop "Non-Tariff Barriers affecting trade in IT products" on May 7 2015, DIGITALEUROPE encourages DG Trade to start working with WTO members on a work programme with doable objectives and a timeline to remove non-tariff measures on IT products and services. We also encourage the European Commission to continue raising technical barriers to trade for IT goods and services in the DG Trade Market Access Working Group on Electronics and ICT products.

Furthermore, we strongly advocate a clear statement in trade agreements that when governments regulate, they should prefer Global Standards/Specifications must be developed based on the principles recognized by the World Trade Organisation (WTO) in the field of standardization and fully endorsed by the European Union (Regulation (EU) 1025/2012 on European standardization) and the DSM, namely coherence, transparency, openness, consensus, voluntary application, independence from special interests and efficiency ('the founding principles').

When such standards/specifications are not available, governments should use Conforming Standards/Specifications that are consistent with the following principles, which are based on the WTO TBT Committee Decision: openness; transparency; non-discrimination; consensus; avoidance of unjustified conflict or duplication with Global Standards/Specifications; relevance; impartiality; and due process.

Trade agreements are also an opportunity to look at innovative regulations in partnering countries, notably in the areas of e-labelling, e-accessibility, e-health/m-health, Big Data and the Internet of Things14.

Finally, we insist on the need for a discipline in trade agreements for a fair and equal access to public procurements for EU operators in partnering countries (see also below, forced localisation measures).

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¹² APEC-OECD Integrated Checklist on Regulatory Reform: A Policy Instrument for Regulatory Quality, Competition Policy and Market Openness" (APEC/OECD); "APEC Information Notes on Good Practice for Technical Regulation" (September 2000); "Principles and Features of Good Practice for Technical Regulation," APEC Sub- Committee on Standards and Conformance.

¹³ See presentations and conclusions of the workshop on the website of WTO: https://www.wto.org/english/tratop_e/inftec_e/workshopmay15_e/workshopmay15_e.htm

¹⁴ See DIGITALEUROPE-ITI joint Recommendations for Regulatory Cooperation in TTIP: http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core Download&EntryId=901&PortalId=0&TabId=353



Forced Localisation Measures

During the St. Petersburg G20 Summit in September 2013, global leaders took the commitment of resisting all forms of protectionism and keep their markets open. However, the rise of forced localisation policies around the world, notably in important sectors such as manufacturing, services and information and communication technologies (ICT), marks a troubling shift in the global trade and economic policies. Also in Europe we noticed the increase of some worrying trends and we therefore welcome the "free flow of data initiative" announced in the EU's Digital Single Market Strategy.

Many governments are beginning to abandon established trade policies that have led to decades of economic growth and the improvement in the quality of life, liberalisation, openness, and economic integration in favor of discriminatory market access barriers.

The study "Local content requirements: A global problem" by the Peterson Institute for International Economics found that local content requirements in numerous countries and industries found that these policies reduce global trade activities by as much as EUR 75 billion annually.

These policies include mandatory technology transfer requirements, local content requirements in government and private sector procurements, forced local ownership of foreign firms and/or their intellectual property, discrimination against foreign online sellers, mandating local hires explicitly or implicitly - including restrictions on movement of skilled technical staff -, in-country testing and certification requirements, import restrictions, and restrictions on the ability to move data across borders, mandatory domestic data center location and data hosting requirements.

In its 2015 Trade and Investment Barriers Report (COM(2015)127)16, DG Trade included and reported on many of these new digital barriers. We encourage the European Union to continue resisting protectionism and to take leadership on the European and global approach of digital trade for transforming opportunities of digitalisation in real benefits, notably by building on the recommendations issued from the work on local content requirements led by the OECD17. Any local content requirement has a strong impact on EU businesses - ICT and non-ICT - inside and outside Europe and on the worldwide economy as the supply chain of the Industry is global and connected, and also results in a GDP loss according to a simulation realised by Brussels think tank ECIPE18.

We would recommend to include in bilateral (e.g. TTIP, EU-Japan FTA, EU-Vietnam FTA, EU-India FTA) and in plurilateral free trade agreements (e.g. TiSA) provisions related to WTO engagements (GATS) in order to avoid disconnected national strategies and support the global economy as a whole.

¹⁵ Peterson Institute for International Economics, « Local Content Requirements: A Global Problem », Policy Analyses in International Economics 102, by Gary Clyde Hufbauer, Jeffrey J. Schott, Cathleen Cimino, Martin Vieiro, and Erika Wada.

¹⁶ COM(2015)127, Report from the Commission to the European Council, Trade and Investment Barriers Report 2015, http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153259.pdf

¹⁷ OECD Trade Policy Paper, « Emerging Policy Issues : Localisation Barriers to Trade access », 1 May 2015, http://www.oecd-ilibrary.org/trade/emerging-policy-issues_5js1m6v5qd5j-en

¹⁸ ECIPE Occasional Paper n°3/2014, "The costs of Data localisation: friendly fire on economic recovery", Matthias Bauer, Hosuk Lee-Makiyama, Erik Van der Marel, Bert Verschelde, p.6.



The 10th WTO Ministerial Conference in Nairobi in December 2015 and the 2016 OECD Ministerial Meeting on Maximising the Benefits of the Internet Economy are opportunities for the European Union to elevate forced localisation related issues as a European and global economic priority.

Finally, we invite EU leaders to acknowledge the principles developed in the Tokyo Resolution on Combatting Data Localisation Requirements¹⁹ agreed and signed by European, American and Japanese ICT industry Associations.

Conclusion

Conclusion of the negotiations for all trade agreements will continue to support the digital transformation of European Industry, especially in support of the Digital Single Market.

In addition, we believe that more regulatory cooperation between our main trading partners addressed in an ICT chapter in ongoing and future bilateral trade agreements will lead to more joint innovation, fewer administrative burdens and costs for businesses, and then to more growth for the EU. It is also needed to remove local content requirements in relation to digital goods and services, which act as critical barriers to the European economic growth and to the development of the EU industry which relies on IT technologies and on the free flows of data.

The Digital Economy is a strategic sector for Europe and an enabler of trade in all sectors. In many ways digital trade is the new sealanes and containers of trade in the 21st century. Trade is not possible without the flow of data and digitally deliverable services. While having recognised their strategic importance, many countries are unfortunately introducing barriers to digital trade and promoting the localisation of digital goods and services. This is a trend DIGITALEUROPE asks the EU to fight against.

DIGITALEUROPE is looking forward to continuing working with the European Institutions to design the foundations of an ambitious EU digital trade policy.

¹⁹ Tokyo Resolution on Combatting Data Localisation Requirements, 8 October 2014, signed by ITI, JEITA and DIGITALEUROPE: http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core Download&EntryId=841&PortalId=0&TabId=353



ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 58 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: http://www.digitaleurope.org

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Belarus: INFOPARK Belgium: AGORIA Bulgaria: BAIT Cyprus: CITEA

Denmark: DI ITEK, IT-BRANCHEN

Estonia: ITL Finland: FTTI

France: AFDEL, Force Numérique,

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Slovakia: ITAS Slovenia: GZS Spain: AMETIC Sweden: Foreningen Teknikföretagen, IT&Telekomföretagen

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